IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1057 OF 1988
With
FIRST APPEAL NO. 1058 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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RADKIBEN R. GAVIT & ANR. - Appellant(s)
Versus
HARSHADBHAI GHELABHAI DESAI & ANR. - Respondent(s)

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Appearance :
First Appeal No.1057 of 1988

Shri Amrish Pandya for Appellants.
None for Respondent No.1 though served.
Ms. Archana Acharya for Respondent No. 2.

First Appeal No.1058 of 1988

Shri Amrish Pandya for Appellants.
None for Respondent No.1 though served.
Ms. Archana Acharya for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/07/2007

COMMON ORAL JUDGMENT

1. The claimant – Radkiben and the claimant - Maganbhai, being partly aggrieved by the award dated 29th February, 1988 passed by the learned Member, Motor Accident Claims Tribunal, Valsad at Navsari in M. V. Claim Petition No.404 of 1984 and M. V. Claim Petition No.405 of 1984, are before this Court seeking enhancement in the amount of compensation.

2. The respondents have not filed any Cross Appeal or Cross Objections, therefore, this Court is not required to enter into the factual aspects of the case. The appellant in each of the case is challenging the quantum of the amount, therefore, this Court is required to look into the losses suffered by the dependents/injured and whether their future is marred and to what compensation, they are entitled.

3. The claimant-Maganbhai in M. V. Claim Petition Case No.405 of 1984 has been awarded a sum of Rs.2,180/- with interest @ 9% per annum. It has come on the record that he was hospitalised between 11th August, 1984 to 16th August, 1984, i. e. for a period of six days. Though he said that he spent a sum of Rs.5,000/- towards medical expenses and medicine, but, he did not produce any documents. Even

otherwise, from the records, it clearly appears that his injuries were minor injuries and did not cause any permanent or partial permanent disability. The learned Tribunal below awarded a sum of Rs.2,000/- for the medical and other charges and also awarded a sum of Rs.180/- towards the loss of income for six days.

4. Shri Amrish Pandya, learned Counsel for the said appellant-Maganbhai, submits that for pain, shock and suffering, nothing has been awarded, therefore, this Court should award some amount.

In the opinion of this Court, the appellant-Maganbhai would be entitled to an additional sum of Rs.2,000/- under the head of pain, shock and suffering and loss of enjoyment of life, with interest at the rate of 9% per annum from the date of the claim petition till the date of realisation. In all, he would be entitled to a sum of Rs.4,180/- instead of Rs.2,180/- with interest at the rate of 9% per annum, as awarded by the learned Tribunal below.

5. So far as the claimant – Radkiben R. Gavit and other dependents are concerned, it is to be seen that the learned Tribunal below in paragraph-18 of the judgement found that the deceased went to Bahrain to earn his livelihood and was sending some money to the family. The learned Tribunal found that within a period of six months,

the deceased sent a sum of Rs.6,500/-, meaning thereby, that on an average, he was sending a sum of Rs.1,100/- per month. Unfortunately the learned Tribunal below, while assessing the loss, reduced the sum of Rs.1,100/- to Rs.1,000/- and out of that amount, reduced a sum of Rs.300/- as personal expenses of the deceased. The learned Tribunal below, in the considered opinion of this Court, did not try to appreciate that the deceased was stationed at Bahrain and after meeting all his expenses, was sending the sum of Rs.1,100/- per month. Out of the said amount of Rs.1,100/-, the deceased could not have spent anything towards his personal expenses because he was sending the sum of Rs.1,100/- after maintaining all his expenses. In the opinion of this Court, the dependency and loss of income should have been assessed at Rs.1,100/- per month or Rs.13,200/- per year. The deceased was already aged about 38 years and under the circumstances, the multiplier of fifteen fifteen at least should have been applied. The total loss, as per the calculation above, would be Rs.1,84,800/-. The learned Tribunal below has found that the deceased was negligent to the extent of 75%, therefore, the amount of compensation should be reduced by 75%. There again, the learned Tribunal, while deducting the amount to the extent of 25%, reduced the amount to be awarded under the loss of expectation of life and funeral expenses. The said amount of Rs.5,000/- and Rs.1,000/- respectively could not have been deducted or reduced to 25%. Out of the amount of Rs.1,84,800/-, 25% compensation would come to the tune

of Rs.46,200/-. The appellant of First Appeal No.1057 of 1988 would be entitled to a total sum of Rs.52,200/-, that is, Rs.31,700/- in addition to what the learned Tribunal has already awarded. The respondents would be jointly and severally liable to pay the said amount to the claimant. The appellant would be also entitled to interest @ 9% per annum on the additional amount from the date of the claim petition till the date of realisation.

6. Both the appeals to the extent indicated above are allowed, but, however, there shall be no order as to costs.

[R.S.Garg, J.]

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